

ADVISORY OPINION 91-21 [1991-13]

The Ethics Commission has reviewed your memorandum dated September 6, 1991, requesting an advisory opinion on whether you could accept a check from the American Public Works Association (APWA) for presenting the best technical paper at an APWA conference.

Based on the memorandum submitted by you and oral representations made by you to Commission staff, the Commission understands the facts to be as follows: You are a member of APWA as a direct result of County employment. APWA invited you to present a paper at the APWA conference in San Francisco in August 1991. You prepared the paper, in part, on County time and also attended the conference on County time. The paper concerned the County's successful contracting experience in contracting out services previously performed by County employees.

Your paper was selected out of over 150 papers as the best technical paper and APWA presented you with a plaque and a check for \$500. You were not aware prior to submitting your paper that an award might be granted. You have asked whether you may retain the \$500 award.

Section 19A-16(c) provides¹:

A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

- (1) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;
- (2) does business with the County agency with which the public employee is affiliated;
- (3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or
- (4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties.

Since it appears to the Commission that APWA does not fall within any of the categories of organizations listed in 19A-16(c), the Commission concludes that you may accept the \$500 award.

The Commission notes, however, that even if the County does contract with APWA through, for example, paying for membership costs, the Commission believes that you would be allowed under the ethics law to retain the \$500 award. Section 19A-

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

16(d)(8) authorizes a public employee to accept an award for achievement even if the award is given by an organization listed in 19A-16(c).

In reaching the determination that the \$500 payment is an achievement award, the Commission has relied heavily on the fact that there was no prior agreement between you and APWA for the payment of compensation (contingent or otherwise) in exchange for your submission of the paper. In fact, you have indicated that you were unaware of the possibility that an award might be given. Accordingly, the Commission finds, in the alternative, that the \$500 payment is an award for achievement and that you may accept it under Section 19A-16(d)(8).

The Commission trusts that you will find this advisory opinion responsive to your inquiry. If you have any further questions regarding this matter, please do not hesitate to contact the Commission.

Date of Issue: 10/15/91